REMARKS

Claims 9-21 are pending. Claims 19-21 are withdrawn. Claims 9-18 are rejected. No claims have been amended; the previous listing of claims is presented for convenience.

Applicants thank the Examiner for the courtesy of a personal interview on August 31, 2005 with Dr. Galopin and applicants' undersigned representative. The substance of the interview was a discussion of the applied art. The Examiner brought to applicants' attention U.S. Patent application Serial No. 10/007,095 (abandoned); U.S. Patent No. 6,878,366 (a Division of the abandoned application); and allowable U.S. Patent application Serial No. 10/265,861 (a continuation of the abandoned application). All of the claims in the '366 patent require ethyl 3-mercaptobutyrate in a method to confer, enhance, improve, or modify odor properties of a perfuming composition or article. All of the allowable claims in the 265,861 application require ethyl 3-mercaptobutyrate in a method to flavor an ingestible composition. The 10/007,095 application is abandoned, hence there are no pending claims. Applicants note published application Serial No. 10/955,833 (a Division of the allowable 265,861 application) of which all of the published claims require a composition containing ethyl 3-mercaptobutyrate.

All of applicants' pending method claims were amended to specifically exclude 3-mercaptobutyrate ("...with the proviso that R^2 is not methyl when R^1 is ethyl...") (October 26, 2004 Amendment). In any event, applicants

- 7 -

have a filing date that is earlier than the earliest filing date of the above

documents, thus, they are not prior art to applicants' claims.

CLAIM REJECTIONS UNDER 35 U.S.C. §103

Claims 9-18 are rejected under 35 U.S.C. §103(a) as obvious over

Chiba in view of Ashurst. Applicant disagrees that Chiba in view of Ashurst

renders the claimed method obvious.

As previously distinguished, Chiba prepares mercaptocarboxylic

acid esters for use as starting materials in industrial synthesis reactions. One

skilled in the art of flavor or fragrance methods would not look to Chiba's

industrial synthesis disclosure. Chiba does not teach, motivate, or suggest any

flavor or fragrance properties of mercaptocarboxylic acid esters. Ashurst

discloses compounds with sulfurous alliaceous flavor notes. Ashurst does not

teach or suggest the claimed 3-mercaptoalkanoic acid esters at all. Even if

Chiba were combined with Ashurst, there is no reasonable expectation of

success that it would yield the claimed flavor or fragrancing method using 3-

mercaptoalkanoic acid esters.

In further support, applicants attach a Declaration under 37 C.R.F. §1.132.

The Declaration analyzes why Ashurst's use of mercaptans as flavorants does

not render obvious applicants' claimed methods. Briefly, the Declaration explains

that a candidate flavorant compound, such as a mercaptan compound, must be

tasted, swallowed, and smelled, because a flavor cannot be predicted based on

a compound's chemical structure. The Declaration also lists examples of

compounds that, although they are mercaptans that are found in food, have no

- 8 -

organoleptic value, and hence cannot be flavorants. The Declaration further

distinguishes the particular flavor property that is claimed, that is, a fruity note in

the absence of a green and/or fatty note, compared to other mercaptans

imparting a meaty note or a green and/or fatty note.

CONCLUSION

For the foregoing reasons, applicants submit that all the rejections

have been overcome and that the application is in condition for allowance.

A petition for a two month extension is included with this

amendment. The Examiner is authorized to charge the $450.00 extension fee to

Deposit Account No. 23-3000. Should any additional fees be needed,

authorization is given to charge or credit any overpayment to Deposit Account

No. 23-3000.

Respectfully submitted,
WOOD, HERRON & EVANS, L.L.P.

By *Beverly A. Lyman*
Beverly A. Lyman, Ph.D.
Reg. No. 41,961

2700 Carew Tower
441 Vine Street
Cincinnati, Ohio 45202
513 241 2324
513 421 7269   Facsimile

-9-